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July 30, 2004

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Our File No. 20939-00101-60

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

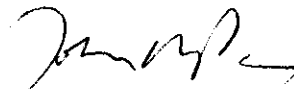
Re: Petition For Rule Making  
Vernal Enterprises, Inc.  
WHPA(FM)  
Barnesboro (Northern Cambria), Pennsylvania  
Channel 228A

Dear Ms. Dortch:

Transmitted herewith, on behalf of Vernal Enterprises, Inc., are an original and four copies of a Petition for Rule Making requesting a change in the community of license of WHPA(FM), from Barnesboro (Northern Cambria), Pennsylvania, to Gallitzin, Pennsylvania.

Should further information be necessary regarding this submission, kindly communicate directly with this office.

Sincerely,



John M. Pelkey

JMP:yg

Enclosures  
DC\_DOCS:626651.1

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Before The  
**Federal Communications Commission**

Washington, D.C. 20554

In the Matter of	]	
	]	
Amendment of Section 73.202(b)	]	File No.
	]	
Table of Allotments	]	
FM Broadcast Stations	]	
Barnesboro (Northern Cambria), Pennsylvania	]	
and	]	
Gallitzin, Pennsylvania	]	

**RECEIVED**

**JUL 30 2004**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

To: Chief, Allocations Branch

### Petition for Rule Making

Vernal Enterprises, Inc. ("Vernal"), licensee of WHPA(FM), Barnesboro (Northern Cambria), Pennsylvania, through counsel, hereby respectfully requests that the Commission institute a rule making to amend Section 73.202(b) of the Commission's rules, the Table of FM Allotments, to reallocate Channel 228A from Barnesboro (Northern Cambria), Pennsylvania, to Gallitzin, Pennsylvania, and to modify the license of WHPA(FM) to specify operation on Channel 228A at Gallitzin, Pennsylvania.<sup>1</sup> In support of this proposal, Vernal states as follows:

Vernal is the licensee of WHPA(FM), which operates on Channel 228A. WHPA(FM)'s community of license, as specified in Section 73.202(b) of the Commission's rules, is Barnesboro, Pennsylvania. Barnesboro no longer exists, however. The communities of Barnesboro, Pennsylvania, and Spangler, Pennsylvania, were

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<sup>1</sup> Because the requested allocation of Channel 228 to Gallitzin is mutually exclusive with the currently licensed WHPA(FM) facilities, the proposal qualifies for treatment under Section 1.420(i) of the Commission's rules.

consolidated into a new entity known as the Borough of Northern Cambria effective January 1, 2000, with the result that the community of Barnesboro is no longer a legal entity.

Vernal seeks to change WHPA(FM)'s community of license from Barnesboro (Northern Cambria), Pennsylvania, to Gallitzin, Pennsylvania, because Gallitzin, Pennsylvania, has a need for local service whereas Barnesboro and Northern Cambria are amply served by other stations. *See Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990) (hereinafter referred to as "*Modification of FM and TV Authorizations*").

I. Allocation of Channel 228 to Gallitzin rather than Barnesboro (Northern Cambria) would Better Serve the Commission's Allocations Priorities.

Gallitzin, Pennsylvania, is an incorporated community. According to the 2000 census, Gallitzin has a population of 1,756. Government of the community is through an elected borough council and mayor. The borough supports its own police force, located at 411 Convent Street in Gallitzin, and a fire department, located on Saint Thomas Street in Gallitzin. It has its own post office and zip code (16641). It is home to the Gallitzin Public Library and is the site of the Middle School for the Penn Cambria School District. Gallitzin also supports the United Methodist Church located on Church Street in Gallitzin. The American Legion maintains a post on Hemlock Street in Gallitzin. Gallitzin is also a tourist attraction as a result of its proximity to the Gallitzin Tunnels Park, site of the Gallitzin Tunnels that permitted the Pennsylvania Railroad to circumvent

the Allegheny Summit in 1854. Despite its prominence, however, Gallitzin currently has no broadcasting service allocated to it, however.

By contrast, the now defunct community of Barnesboro, which presently is WHPA(FM)'s community of license according to CDBS, currently enjoys service from one AM station, WNCC(AM), and Northern Cambria, which is the community that resulted from the merger of Barnesboro and Spangler, also enjoys service from WPCL(FM). Thus, as matters currently stand, Barnesboro, with a 1990 population of 2,530, has two stations and Northern Cambria, with a 2000 population of 4,199 persons, has three stations if the current Barnesboro stations are added to the Northern Cambria station, whereas Gallitzin, with a population of 1,756, has no broadcast outlet.

As the Commission explained in *Revision of FM Assignment Policies and Procedures*, the FM allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters (with co-equal weight being given to priorities (2) and (3)). 90 FCC2d 88, 91 (1982). More recently, the Commission has acknowledged that, because "there are virtually no populated areas of the country where our higher allotment priorities, such as first reception service, have not been attained[,] . . . as a practical matter, provision of first local service is the highest of our allotment priorities which remains in any significant degree unsatisfied." *Modification of FM and TV Authorizations*, 5 FCC Rcd at 7096 (¶ 16). Reallocation of Channel 228 from Barnesboro to Gallitzin would allow the Commission to achieve this de facto highest of allotment priorities.

II. The Reallocation of Channel 228 from Barnesboro to Gallitzin Can be Accomplished in Full Compliance With the Commission's Policies and Engineering Criteria.

Moreover, the proposed reallocation can be effectuated in full compliance with the Commission's policies and rules. In that regard, two criteria come into play: first, does the proposal allow the continuation of service in the former community of license?; second, does the proposal satisfy the Commission's engineering standards? The instant proposal satisfies both of these criteria.

With respect to the first criterion, because Barnesboro and Northern Cambria would continue to enjoy service from other broadcast outlets after Channel 228 is reallocated to Gallitzin, the proposal is consistent with the procedures for reallocating a channel from one community to another that were sanctioned by the Commission in *Modification of FM and TV Authorizations*.

The proposal also satisfies the second criterion inasmuch as it complies with the Commission's spacing and city-grade coverage requirements. As is set forth in the attached *Engineering Report of Wheeler Broadcast Consulting ("Engineering Report")*, Channel 228A can be allocated to Gallitzin in full compliance with the spacing rules through the imposition of a 14.66 km site restriction.<sup>2</sup> The maps included as Exhibits 2 and 3 to the *Engineering Report* depict that, from the specified reference coordinates, the facility would be able to achieve coverage of all of Gallitzin with a principal community contour.

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<sup>2</sup> The reference coordinates used in the spacing study are: 40°-36'-31" NL; 78°-36'-21" WL.

In addition, although favorable action on this proposal would result in a small loss area, that area receives service from at least 11 other stations. *See Engineering Report* at p.2 and Ex. 4.

III. Vernal Will Apply for and Construct the Facilities Necessary to Allow WHPA(FM) to Place the Requisite City-Grade Signal Over Gallitzin.

Vernal hereby commits that, if Channel 228A is allocated to Gallitzin, it will file the requisite application for WHPA(FM) so as to allow the station to place the requisite signal over Gallitzin and to promptly construct those facilities upon grant of the application. As a result, favorable action on the instant proposal would permit an immediate commencement of first local service to Gallitzin.

Conclusion

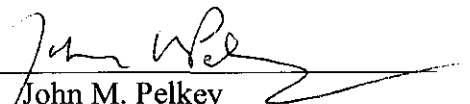
For the reasons stated above, the public interest would be served by the reallocation of Channel 228A from Barnesboro, Pennsylvania, to Gallitzin, Pennsylvania. Accordingly, Vernal respectfully requests that the Commission institute a rule making proceeding that would amend the FM Table of Allotments as follows:

Community	Present	Proposed
Barnesboro, Pennsylvania	228A	-----
Gallitzin, Pennsylvania	-----	228A

Vernal also requests that the WHPA(FM) license be modified to specify Gallitzin as the station's community of license.

Respectfully submitted,

VERNAL ENTERPRISES, INC.

By:   
John M. Pelkey  
Its Attorney

Garvey, Schubert Barer  
5<sup>th</sup> Floor, 1000 Potomac Street, N.W.  
Washington, DC 20007

202/965-7880

Date: July 30, 2004

# **ENGINEERING REPORT**





# WHEELER BROADCAST CONSULTING

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## ***Engineering Report***

Vernal Enterprises, Inc.  
Amendment to 47 CFR 73.202 (b)

This consultant has been retained by Vernal Enterprises, Inc. (Vernal), Licensee of WHPA in Barnesboro, PA to provide technical support to a petition for rule making which seeks to amend 47 CFR 73.202 (b) of the Commission's Rules.

### **Proposed Amendment**

WHPA is currently licensed to Barnesboro, PA. On January 1, 2000 Barnesboro, PA and the adjoining community of Spangler, PA merged to create a new community called Northern Cambria, PA. As such, WHPA is licensed to a community which no longer exists. Vernal proposes that Channel 228 A be reallocated from Barnesboro, PA to Gallitzin, PA as that community's first local service.

Gallitzin, PA is listed in the United States Census with reference coordinates of 40° 28' 56" N by 78° 33' 21" W. The point nearest Gallitzin where Channel 228 A meets the minimum spacing requirements of 47 CFR 73.207 is located at 40° 36' 31" N by 78° 36' 21" W which serves as the proposed allocation reference point. The allocation reference point is suitable for a FM transmission facility. The allocation reference point is 14.66 km NNW of Gallitzin, PA at a bearing of 343.2°. The allocation point is 9.33 km distant from the licensed Channel 228 A WHPA operation and, as such, is mutually exclusive with the presently licensed operation. Exhibit 1 of this report is a search of the Commission's CDBS database which demonstrates that the proposed allocation site is in full compliance with the spacing requirements of 47 CFR 73.207.

Exhibit 2 of this report is a digitally generated map which shows the corporate limits of Gallitzin, PA as well as a 16.2 km radius, 70 dBu allocation reference circle centered at the allocation reference site. As shown in Exhibit 2, the community of Gallitzin is entirely contained within the reference circle. Exhibit 3 is a 1:80,000 detail map which conclusively shows the same.

As shown above, the proposed Channel 228 A allocation at Gallitzin, PA is compliant with 47 CFR 73.207 and 47 CFR 73.215 of the Commission's Rules.

### **Other Aural Services**

There are presently three radio broadcast stations licensed to Barnesboro, PA or Spangler, PA, WHPA (FM), WNCC (AM), and WPCL (FM). WPCL (FM) is listed in the Commission's CDBS database as being licensed to Northern Cambria. The reallocation of WHPA (FM) would thus not leave Northern Cambria without local service.

The proposed Gallitzin allocation would result in a small area of lost service<sup>1</sup>. Exhibit 4 of this report is a digitally generated map which shows the existing, licensed, WHPA 60 dBu protected contour, a 28 km radius allocation reference circle from the proposed Gallitzin allocation reference site, and the protected contours of an additional 11 radio stations<sup>2</sup> that provide protected service to all or part of the loss area.

### **Urbanized Areas**

The Borough of Gallitzin, PA is not located in an Urbanized Area. The nearest Urbanized Area is the Altoona, PA Urbanized Area. Exhibit 5 of this report details the 70 dBu reference contour of the proposed Channel 228 A operation at Gallitzin, PA and the Altoona, PA Urbanized Area. The 16.2 km allocation radius overlaps with a small part of the Altoona, PA Urbanized Area, however, that overlap is less than 1% of the total area in the Urbanized Area. The overlap is clearly much less than 50% and, as such, a "Tuck" analysis is not required.

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<sup>1</sup> The WHPA Channel 228 A operation at Barnesboro was allocated prior to Docket 80-90 as a 3 kW Class A operation.

<sup>2</sup> The protected contours shown in Exhibit 3 do not represent all of the aural services available in the loss area. So as to limit the clutter on the map exhibit only a sufficient number to conclusively demonstrate that the loss area is "well served" were included.

### **Population Study**

The US Census Bureau reports that the community of Gallitzin has a population of 1,756 persons. In the 1990 Census, the last available census for Barnesboro as a community, the population was 2,530 persons. As such, Gallitzin and Barnesboro are similarly sized communities. The total population served by the licensed WHPA operation totals 68,102 Persons whereas the proposed Channel 228 A operation at Gallitzin would serve a population of 176,779 persons<sup>3</sup>. The additional 108,677 persons represents an increase of 159 % in total population served.

### **Conclusion**

The public interest is clearly served by the reallocation of Channel 228 A from Barnesboro, PA, a community which no longer exists, to Gallitzin, PA as that community's first local service. Barnesboro, PA (now part of Northern Cambria, PA) will continue to have local service from WNCC (AM) and WPCL (FM). It is therefore appropriate to amend the Table of Allotments, 47 CFR 73.202 (b) as follows:

Community	Present Allocation	Proposed Allocation
Barnesboro, PA, Spangler, PA <sup>4</sup>	228 A, 247 A	----
Northern Cambria, PA	247 A	247 A
Gallitzin, PA	----	228 A

### **Certification**

All information in this report and its associated exhibits is true and accurate to the best of my belief. Having had numerous matters before the Commission, my qualifications are a matter of record.

July 27, 2004  
Date

R. Lee Wheeler  
R. Lee Wheeler

<sup>3</sup> The Gallitzin operation 60 dBu service population was determined by assuming flat earth and a Class A contour radius of 28 km.

<sup>4</sup> The CDBS data entry for WPCL (FM) is ambiguous as it references both Spangler, PA and Northern Cambria, PA. The table of allotments, 47 CFR 73.202 (b), Oct. 2003, Shows WPCL (FM) being licensed to Spangler, PA.

# **EXHIBIT 1**

Wheeler Broadcast Consulting  
3718 W. 52nd Terrace Shawnee Mission KS 66205

Vernal Enterprises, Inc.  
Gallitzin, PA

REFERENCE		CLASS A	DISPLAY DATES
40 36 31 N			DATA 06-06-04
78 36 21 W	Current rules spacings		SEARCH 07-28-04
----- CHANNEL 228 - 93.5 MHz -----			

CALL TYPE	CH# LAT	CITY LNG	STATE PWR	BEAR' HT	D-KM D-Mi	R-KM R-Mi	MARGIN (KM)
WHPA LIC C	228A 40 36 10	Barnesboro 78 42 57	PA 1.300 kW	266.0 152M	9.33 5.8	115.0 71.5	-105.67 *
	Vernal Enterprises Inc.					BLH19990816KB	16
WDHC LIC CN	228A 39 37 01	Berkeley Springs 78 13 00	WV 3.000 kW	163.2 21M	115.00 71.5	115.0 71.5	0.00 *
	Capper Broadcasting Company					BMLH19970513KA	23
WBUS LIC CN	229A 40 45 08	Boalsburg 77 45 16	PA 0.330 kW	77.2 415M	73.72 45.8	72.0 44.8	1.72 <
	Dame Broadcasting, Llc					BLH19980108KD	08
WQYX AUX CN	226B1 41 02 32	Clearfield 78 26 54	PA 3.000 kW	15.3 29M	49.95 31.0	48.0 29.8	1.95 <
	Clearfield Broadcasters, Inc.					BMLH19970508KD	04
WQYX LICNCN	226B1 41 04 05	Clearfield 78 31 08	PA 1.700 kW	8.1 287M	51.54 32.0	48.0 29.8	3.54
	Clearfield Broadcasters, Inc.					BLH19960917KA	14
WBZZ AUX CN	229B 40 26 28	Pittsburgh 80 01 32	PA 22.500 kW	261.6 158M	121.73 75.7	113.0 70.2	8.73
	Infinity Radio Subsidiary Ope					BLH19920430KH	01
WBZZ LIC CN	229B 40 26 28	Pittsburgh 80 01 32	PA 41.000 kW	261.6 167M	121.73 75.7	113.0 70.2	8.73
	Infinity Radio Subsidiary Ope					BMLH19911212KC	28
WQZS LIC C	227A 39 47 49	Meyersdale 79 10 05	PA 0.630 kW	208.1 294M	102.05 63.4	72.0 44.8	30.05
	Roger Wahl					BMLH19991118ABA	17
WKBIFM LICNCN	230B1 41 23 11	St. Marys 78 41 32	PA 2.350 kW	355.2 244M	86.68 53.9	48.0 29.8	38.68
	The Elk-cameron Broadcasting					BLH19960925KE	24
WTPA LIC CN	228A 40 10 38	Mechanicsburg 76 52 38	PA 1.250 kW	107.6 219M	154.39 95.9	115.0 71.5	39.39
	Cumulus Licensing Corp.					BLH19930409KE	98080 19

Wheeler Broadcast Consulting  
3718 W. 52nd Terrace Shawnee Mission KS 66205

## CLASS A

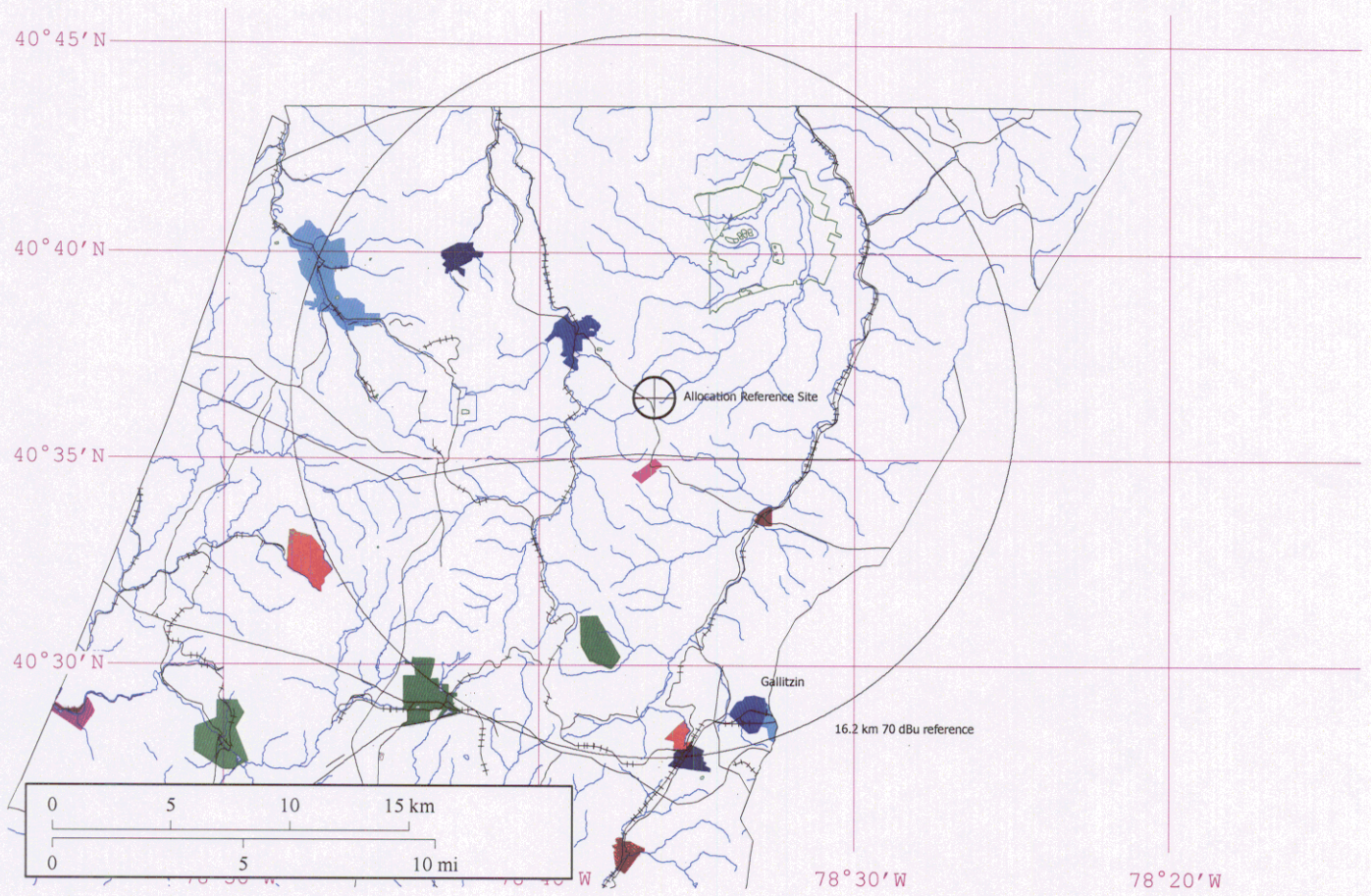
CALL TYPE	CH# LAT	CITY LNG	STATE PWR	BEAR' HT	D-KM D-Mi	R-KM R-Mi	MARGIN (KM)
WPXZFM	281A	Punxsutawney	PA	319.6	51.40	10.0	41.40
LIC CN	40 57 36	79 00 08	3.000 kW	90M	32.0	6.2	
		Renda Broadcasting Corporatio		BMLH19980403KF			04

## **EXHIBIT 2**





# MARPLOT - Cambria County, PA

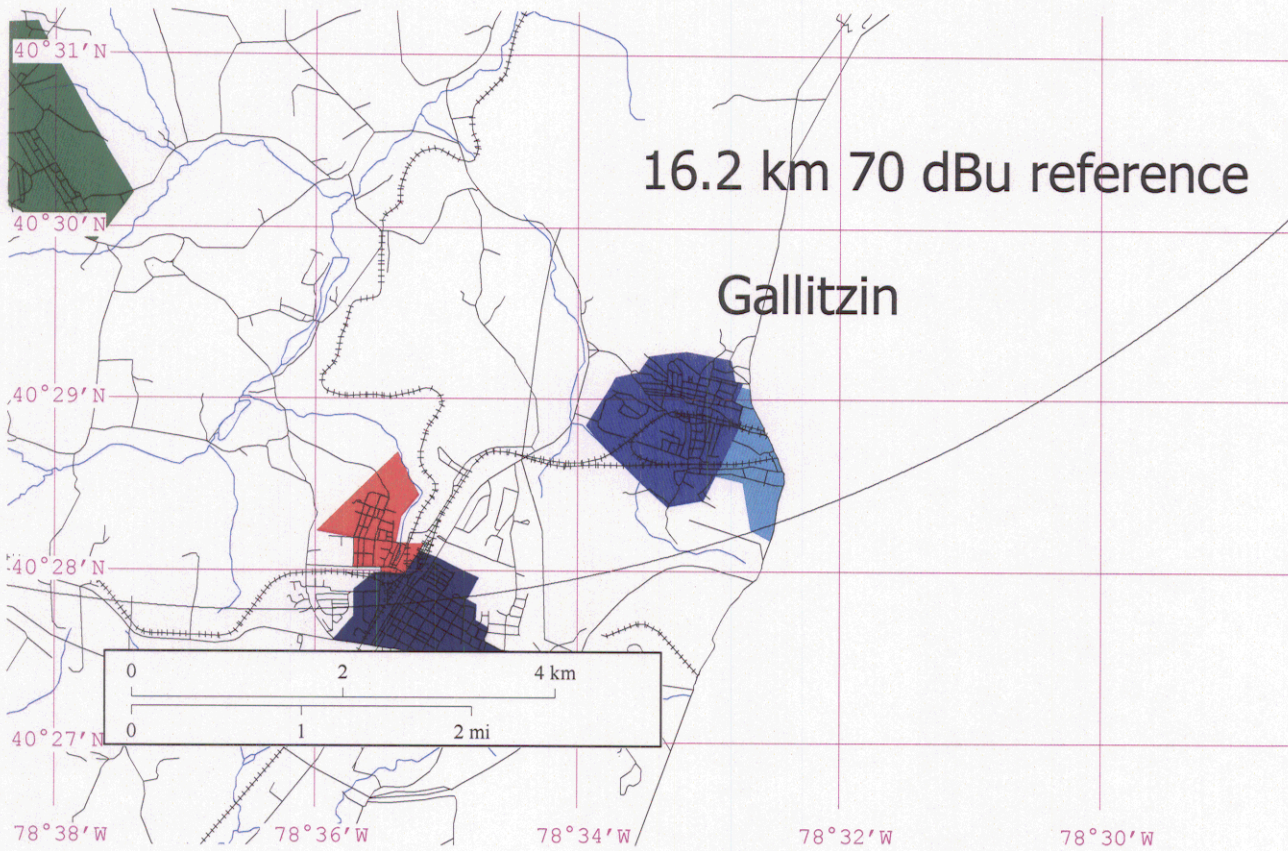




## **EXHIBIT 3**

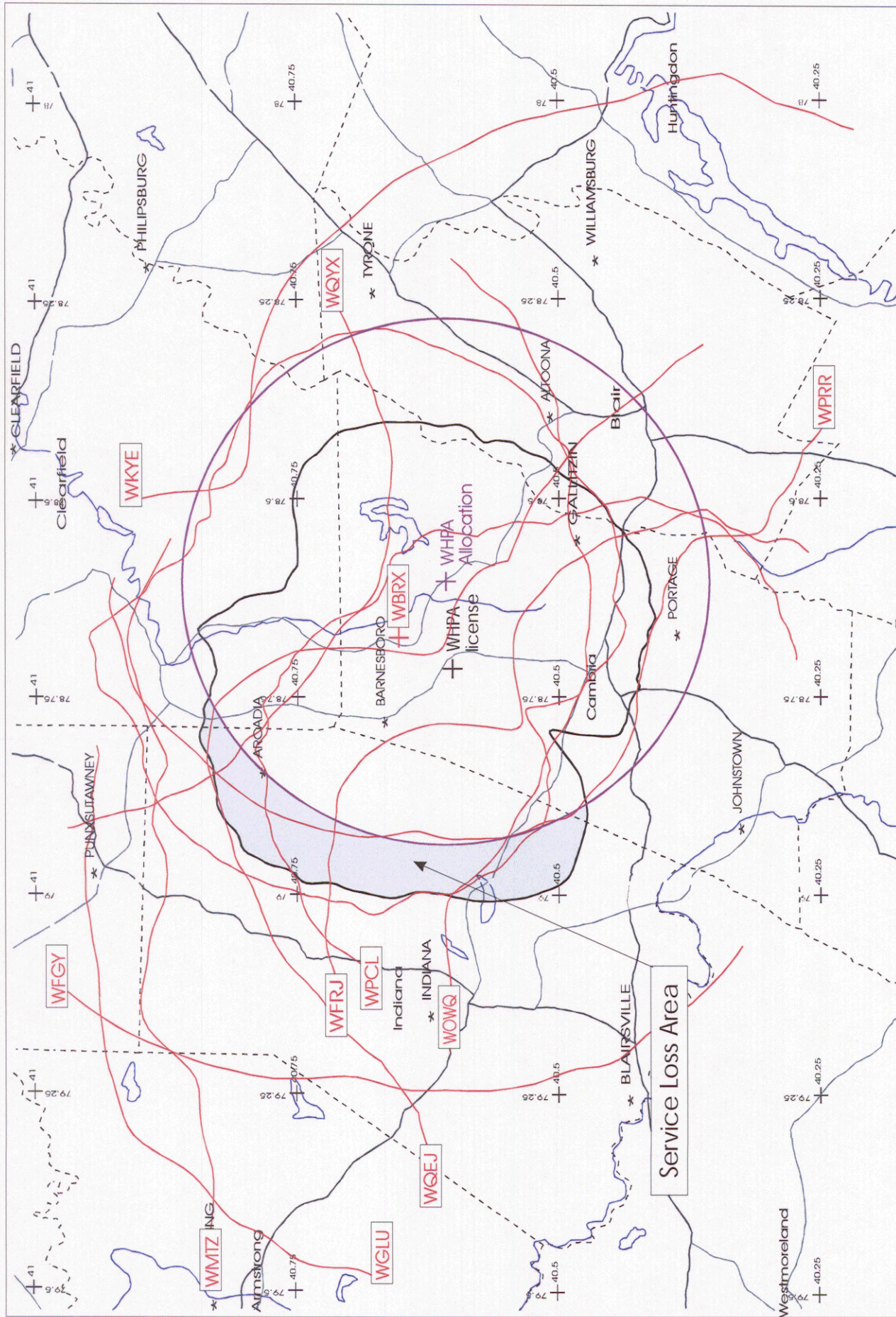


# MARPLOT - Cambria County, PA



## **EXHIBIT 4**





Additional Aural Services in Loss Area

EXHIBIT 4

N. Lat. 40 36 10 W. Lng. 78 42 57

LEE WHEELER - 07/04

## **EXHIBIT 5**





# MARPLOT - Cambria County, PA

